

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION  
AND THE HERITAGE CONSERVATION AND RECREATION SERVICE CONCERNING EMERGENCY  
PROCEDURES APPLICABLE TO UNANTICIPATED CULTURAL RESOURCES DISCOVERED  
DURING CONSTRUCTION OF FEDERAL-AID HIGHWAYS

WHEREAS, the United States Department of Transportation, Federal Highway Administration (FHWA), is authorized and directed by Congress to implement the Federal-aid highway program (Title 23, U.S.C.); and

WHEREAS, a delay to the project could unnecessarily disrupt a construction schedule and be costly; and

WHEREAS, representatives of the FHWA, the National Conference of State Historic Preservation Officers, the Heritage Conservation and Recreation Service (HCRS), and the Advisory Council on Historic Preservation (ACHP) have met to consider FHWA responsibilities when such emergency conditions exist; and

WHEREAS, these parties agree that a special procedure is necessary and appropriate to allow expeditious consideration of such resources and meet the requirements of 36 CFR, Part 800.7;

THEREFORE, it is mutually agreed that the stipulations in this Memorandum of Understanding provide an expeditious alternate method for consideration of cultural resources which are discovered after construction has started.

STIPULATIONS


- I. When a Federal-aid highway construction project uncovers a cultural resource that may be eligible for the National Register, the expeditious process detailed in Stipulation II may be adopted if the following has been accomplished:
  - A. A cultural resource survey performed according to the requirements of 36 CFR, Part 800.4(a), was completed prior to project approval and the discovered resource was not identified during such survey.
  - B. The process detailed in the ACHP regulations (36 CFR, Part 800) was completed prior to the start of construction.
  - C. The construction contract directs the contractor to be on the lookout for cultural resources and to avoid damage to such discovered resources until the provisions of Stipulation II are complied with.

II. Whenever anything that might be a cultural resource is discovered during construction, work will avoid the area of the discovery and the contractor shall notify the State highway agency (SHA) immediately. If warranted, the SHA will contact and inform the State Historic Preservation Officer (SHPO) and FHWA of the discovery and arrange an onsite meeting of appropriate parties if either FHWA or the SHPO believes it necessary. If it is determined that a meeting will be held, the following actions will be taken:

- A. The FHWA will notify the HCRS, Division of Interagency Archeological Services (IAS), Department of the Interior (DOI), by telephone with followup written notification that it appears that significant archeological or historical data contained in a cultural resource have been uncovered on a particular project.
- B. Within 48 hours of telephone notification, HCRS will send an authorized representative of the Secretary of the Interior (DOI representative) to examine the discovery.
- C. Following examination and consultation with the SHPO, SHA, FHWA, and any local authorities deemed appropriate, one of the following recommendations will be made at the onsite meeting by the DOI representative. If the DOI representative does not attend the scheduled field review, FHWA may proceed with what it considers to be an appropriate course of action. The SHA and SHPO representatives may also make one of these recommendations if they so choose.
  1. The data discovered are significant and should be preserved in place; or
  2. The data discovered are significant and should be recovered; or
  3. The data discovered are significant but no additional data recovery need be undertaken; or
  4. The data discovered are not significant and no data recovery need be undertaken.
  5. There is insufficient information to determine if the data discovered are significant and the necessary steps to obtain the needed information to reach one of the definite conclusions stated above will be recommended.

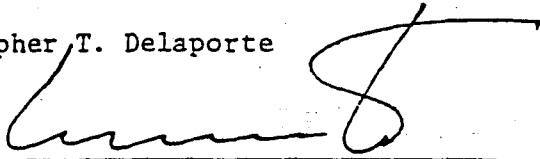
- D. In consultation with the DOI representative, the SHPO, SHA, and appropriate local authorities, FHWA will decide the appropriate course of action in proceeding with the project. When data recovery is the appropriate option, the onsite meeting will determine what steps should be taken to recover the significant data, including development of data recovery plan.

III. This understanding may be terminated by any of the signatories upon a 60-day notification to all other signatories.

  
 Administrator, Federal Highway  
 Administration

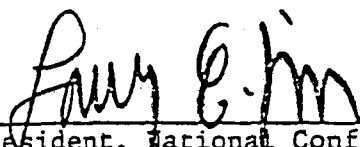
SEP 23 1980  
 Date

Christopher T. Delaporte

  
 Director, Heritage Conservation  
 Recreation Service

10.1.80  
 Date

Concurring Party

  
 Larry E. Tise  
 President, National Conference  
 of State Historic Preservation  
 Officers

10/28/80  
 Date

DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

UNITED STATES GOVERNMENT

# memorandum

Subject: Memorandum of Understanding on Late  
Discovery of Archeological Resources

Date: 24 NOV 1980

From: Director, Office of Environmental Policy  
Washington, D.C.

Reply to  
Attn. of: HEV-22

To: Regional Federal Highway Administrators,  
Regions 1-10, and Regional Engineer,  
Region 15

Attached is a copy of a Memorandum of Understanding (MOU) recently concluded between the Federal Highway Administration (FHWA) and the Heritage Conservation and Recreation Service (HCRS) of the Department of the Interior (DOI). The National Conference of State Historic Preservation Officers (NCSHPO) has signed the MOU as a concurring party.

This MOU was developed as the final product of a long series of discussions and negotiations with various interested parties. In 1978, before the current Part 800 procedures were adopted by the Advisory Council on Historic Preservation (ACHP), FHWA expressed to the ACHP its concern that Section 800.7, Resources Discovered During Construction, allowed the ACHP 30 days to comment, a time period that FHWA felt was too long. Part 800.7, as adopted, did not alleviate this potential delay, so in January 1979, FHWA began meeting with the ACHP in order to develop a procedure more suitable to the highway program. Meetings and negotiation with the ACHP continued until Mr. Robert M. Utley's letter of October 10, 1979, was received (copy attached). This letter advised that the ACHP considered the draft procedure closely parallel to Part 800.7 and recommended that the FHWA enter into an agreement with DOI rather than the ACHP on this subject.

The FHWA accepted the ACHP's recommendation and continued development of this MOU with HCRS as the other signatory to the agreement. The NCSHPO was included as a concurring party.

It is FHWA's position that adherence to the procedure contained in this MOU will satisfy FHWA's historic preservation obligations for those situations covered by the MOU. It should be emphasized that this MOU details an optional procedure that may be used in place of the normal 36 CFR Part 800.7 procedures, but is not mandatory. State highway agencies should be made aware of its existence and given the opportunity to use it if they wish.

It is our hope that field offices of the FHWA and State highway agencies will find this procedure helpful in resolving late discovery situations. We would appreciate comments on how the procedure works, if it is implemented by States in your Region.



For Leon N. Larson

2 Attachments